

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
GAINESVILLE DIVISION

DAVID K. SHANYFELT,	:	
	:	
Plaintiff,	:	CIVIL ACTION FILE NO.
	:	2:10-CV-0041-RWS-SSC
v.	:	
	:	
WACHOVIA MORTGAGE FSB,	:	
WELLS FARGO HOME MORTGAGE	:	
INC., MORTGAGE ELECTRONIC	:	
REGISTRATION SYSTEMS, INC.	:	
and MCCALLA RAYMER, LLC/	:	
MCCALLA RAYMER, ESQ.	:	
	:	
Defendants.	:	

ORDER

This case is before the court on the Motion to Consolidate filed by Defendants Wachovia Mortgage FSB (“Wachovia”), Wells Fargo Home Mortgage, Inc. (“Wells Fargo”) and Mortgage Electronic Registration Systems, Inc. (“MERS”) [Doc. 6]. These defendants “move, pursuant to Fed. R. Civ. P. 42, to have this matter consolidated with Plaintiff David Shanyfelt’s (“Plaintiff”) other lawsuit pending in this Court.” (Doc. 6 at 1).

Relevant Procedural History

On December 31, 2009, Plaintiff, proceeding *pro se*, filed a “Complaint for Perm[a]nent Injunction and Other Equitable Relief” against Defendants Wachovia, Wells Fargo and MERS in the United States District Court for the Northern District of Georgia, Atlanta Division. See Shanyfelt v. Wachovia, et al., Civil Action File No. 1:09-CV-3690-ODE. In that case, Plaintiff alleged that he had obtained a loan for \$560,000 to purchase property at 5990 Robbs Drive, Cumming, Georgia, and he alleges that Defendants violated several federal statutes and

regulations—including the Truth in Lending Act, Regulation Z, the Real Estate Settlement and Procedures Act, the Home Owners Equity Protection Act, the Equal Credit Opportunity Act and the Fair Credit Reporting Act—with respect to that loan transaction. Among other things, he seeks rescission of the transaction.

On February 9, 2010, Plaintiff filed in the Superior Court of Forsyth County, Georgia a “Complaint to Set Aside Wrongful Foreclosure and Temporary Restraining Order,” alleging that Defendants Wachovia, Wells Fargo, MERS and McCalla Raymer, LLC unlawfully foreclosed on the property at 5990 Robbs Drive, Cumming, Georgia, and noting, among other things, that he had previously filed a complaint in this court against Wachovia, Wells Fargo and MERS. (See Compl., Ex.A to Doc. 1 in Civil Action File No. 2:10-CV-0041-RWS-SSC). Defendants Wachovia, Wells Fargo and MERS¹ removed that lawsuit, the instant action, to the United States District Court for the Northern District of Georgia, Gainesville Division. [Doc. 1]. Defendants assert that there is “complete diversity of citizenship among the parties” and that the amount in controversy exceeds \$75,000. (Doc. 1, Notice of Removal at ¶ 2).

On March 31, 2010, Defendants filed a motion to consolidate the instant case with Shanyfelt v. Wachovia, et al., Civil Action File No. 1:09-CV-3690-ODE. [Doc. 6]. Plaintiff has not filed a response to the motion, thereby indicating that he does not oppose the motion. See LR 7.1B, NDGa. (“Failure to file a response shall indicate that there is no opposition to the motion.”).

Discussion

¹According to Defendants, McCalla Raymer, LLC has not been served with process. (Doc. 1, Notice of Removal at 1 n.1).

Fed. R. Civ. P. 42(a) provides:

Consolidation. If actions before the court involve a common question of law or fact, the court may:

- (1) join for hearing or trial any or all matters at issue in the actions;
- (2) consolidate the actions; or
- (3) issue any other orders to avoid unnecessary cost or delay.

The undersigned finds that consolidation is appropriate here because these cases involve common questions of law and fact. The instant action involves the same parties, and the same property, i.e., the property at 5990 Robbs Drive, Cumming, Georgia. In order to avoid inconsistent results and to promote judicial economy, the cases should be consolidated. Accordingly, Defendants' motion to consolidate [Doc. 6] is **GRANTED**. The Clerk is **DIRECTED** to transfer the instant action to the Atlanta Division and consolidate it with Civil Action File No. 1:09-CV-3690-ODE, and to close Civil Action File No. 2:10-CV-41-RWS-SSC.

IT IS SO ORDERED this 19th day of April, 2010.

Susan S. Cole

SUSAN S. COLE

United States Magistrate Judge